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ENVIRONMENTAL PROTECTION
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REGIONAL HEARING CLERK

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Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. This Complaint serves as notice that the United States Environmental Protection Agency, Region VII (EPA) has reason to believe that Respondent has violated the National Emission Standards for Hazardous Air Pollutants (NESHAPs), and specifically the National Emission Standards for Wood Furniture Manufacturing Operations, 40 C.F.R. Part 63, Subpart JJ, promulgated pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and that Respondent is therefore in violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is Grandview Products Company, Inc., (Grandview Products) located at 1601 Superior Drive, Parsons, Kansas 67357. Grandview Products is a Missouri corporation doing business and in good standing in the State of Kansas. Grandview Products manufactures kitchen cabinets and counter tops from wood.

Statutory and Regulatory Background

5. Section 112 of the Clean Air Act, 42 U.S.C. § 7412, grants the Administrator of EPA authority to regulate hazardous air pollutants which may have an adverse effect on health or the environment. Section 112(f)(4) of the Clean Air Act, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard except in compliance with the regulations promulgated by EPA.

6. Pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, the Administrator established national emission standards for hazardous air pollutants (NESHAP), 40 C.F.R. Part 63. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in Part 63. Special provisions are set forth in the Subparts to Part 63. Subpart JJ sets forth the NESHAP for Wood Furniture Manufacturing Operations. Subpart JJ sets forth emission limits for sources of volatile hazardous air pollutants (VHAP). Subpart JJ also contains work practice, reporting and notification requirements. The compliance date for existing affected sources that emit 50 tons or more per year of hazardous air pollutants (HAPs) in 1996, is November 21, 1997.

7. Violation of a NESHAP is a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

8. Definitions are set forth in 40 C.F.R. § 63.801. "Affected source" is defined as a wood furniture manufacturing facility that is engaged either in part or in whole, in the manufacture of wood furniture or wood furniture components that is located at a plant site that is a major source as defined in 40 C.F.R. § 63.2. Wood furniture component is defined to include cabinets and laminated tops.

9. Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2, define "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

10. Section 111(a)(3) of the Clean Air Act, 42 U.S.C. § 7411(a)(3), defines a "stationary source" as any building, structure, facility, or installation that emits or may emit any air pollutant.

11. Section 112(a)(9) of the Clean Air Act, 42 U.S.C. § 7412(a)(9), defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

12. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), defines "person" to include an individual, corporation, partnership, or association.

13. Emission limits are set forth in 40 C.F.R. § 63.802. Under 40 C.F.R. § 63.802(a)(3), each owner or operator of an affected source subject to Subpart JJ must limit HAP emissions from strippable spray booth coatings by using coatings that contain no more than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied.

14. Reporting requirements are set forth in 40 C.F.R. § 63.807. Pursuant to 40 C.F.R. § 63.807(c), owners or operators of an affected source must submit a semi-annual report covering the previous six months of wood furniture operations.

15. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$27,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Clean Air Act referenced therein, including Section 112, 42 U.S.C. § 7412.

Violations

16. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

General Allegations

17. Respondent is and, at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

18. Respondent is the "owner or operator" of a facility located at 1601 Superior Drive, Parsons, Kansas, as defined by Section 112(a)(9) of the Clean Air Act, 42 U.S.C. § 7412(a)(9).

19. Respondent's facility located at 1601 Superior Drive, Parsons, Kansas, is a "stationary source" as defined by Section 111(a)(3) of the Clean Air Act, 42 U.S.C. § 7411(a)(3).

20. Respondent's facility located at 1601 Superior Drive, Parsons, Kansas, is a "major source" as defined by Section 112(a)(9) of the Clean Air Act, § 7412(a)(1).

21. On or about November 21, 2000, EPA Region VII conducted an Air Compliance Inspection at Grandview Product's Parsons, Kansas facility.

22. The Inspection revealed that Respondent manufactures kitchen cabinets and counter tops from wood.

23. Respondent's facility is an "affected source" and is subject to 40 C.F.R. Part 63, Subpart JJ, because it is an owner and operator of a facility that manufactures wood furniture

components and is a major source.

24. Respondent gave notice on or about September 5, 1996, by submitting an "Air Quality Notification Form" that Respondent's facility was an existing major source that emits greater than fifty tons per year hazardous air pollutants. The Air Quality Notification Form states that Respondent's compliance date is November 21, 1997.

25. On or about March 8, 2001, EPA sent an information request pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414. Respondent submitted a response to this request on or about March 22, 2001.

Count 1

26. The facts alleged in paragraphs 17 through 25 are incorporated herein as if fully stated.

27. The November 21, 2000, inspection of Respondent's facility and the response to EPA's information request revealed that Respondent used Product No. 298-2049, "White Booth Coating" with a total VHAP content of 2.23 lb VOC/lb solid as a strippable spray booth coating.

28. The November 21, 2000, inspection of Respondent's facility and the response to EPA's information request revealed that Respondent used Product "946 White Booth Coating" with a total VOC content of thirty percent or 2.3 lb VOC/lb solid as a strippable spray booth coating.

29. Respondent violated the NESHAP, 40 C.F.R. Part 63, Subpart JJ, by failing to comply with the emission limit for HAP emissions from strippable spray booth coatings by using coatings that contained more than 0.8 lb VOC/lb solids as applied in violation of 40 C.F.R. § 63.802(a)(3).

30. Respondent's failure to comply with the NESHAP, 40 C.F.R. Part 63, Subpart JJ is a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count 2

31. The facts alleged in paragraphs 17 through 25 are incorporated herein as if fully stated.

32. The November 21, 2000, inspection of Respondent's facility and the response to EPA's information request revealed that Respondent failed to submit semi-annual compliance reports. Respondent submitted one semi-annual report in January, 1998.

33. Respondent violated the NESHAP, 40 C.F.R. Part 63, Subpart JJ, by failing to comply with the reporting and notification requirements by failing to submit a semi-annual compliance report as required by 40 C.F.R. § 63.807(c).

34. Respondent's failure to comply with the NESHAP, 40 C.F.R. Part 63, Subpart JJ is a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Relief

35. Section 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1)(B), authorizes a civil penalty of up to \$25,000 per day for each violation of the Clean Air Act that occurs prior to January 30, 1997. The Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, amended the Clean Air Act penalty authority to allow penalties of up to \$27,500 per day of violation. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violation in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e), and the Stationary Source Civil Penalty Policy, October 25, 1991 (copy enclosed), as well as Respondent's history of any prior violations and degree of culpability.

PROPOSED PENALTY

36. For the violations stated herein, it is proposed that a penalty of \$105,325 be assessed. The proposed penalty was determined by calculation in accordance with the enclosed Clean Air Act Stationary Source Civil Penalty Policy, by combining the factors in the policy, including the appropriate penalty for the Counts set forth herein, the size of Respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent.

37. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk.

Payment of the penalty - \$105,325 - may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

EPA - Region 7
Attn: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

Checks should reference the name and docket number of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

38. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

39. Any Respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an Answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject the Respondent to default.

40. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.

41. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

42. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

43. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to: (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing; Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or the Clean Air Act.

Informal Settlement Conference

44. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Julie M. Van Horn
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101
Telephone (913) 551-7010.

45. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

46. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

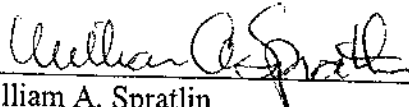
47. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Waiver

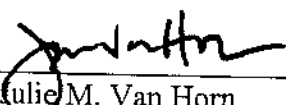
48. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the total penalty exceeds \$200,000 or where the first alleged date of violation occurred more than 12

months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

Date 12/5/02



William A. Spratlin
Director
Air, RCRA and Toxics Division



Julie M. Van Horn
Senior Assistant Regional Counsel

Enclosures: Consolidated Rules of Practice
Clean Air Act Penalty Policy

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice and the Clean Air Act Penalty Policy were mailed by certified mail, return receipt requested, to the registered agent for Grandview Products:

Emil A. Zetmeir
1601 Superior Drive
Parsons, Kansas 67357-0000

12/11/02
Date

